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7 MEDIA IV LLC

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 CONVERGENT MEDIA IV LLC, a
12 Florida limited liability company,

13 Plaintiff,

14 v.

15 APERTURE MEDIA PARTNERS
16 LLC, a Delaware limited liability
company,

17 Defendant.

Case No. 2:24-cv-00129

COMPLAINT

18
19 **COMPLAINT**

20 Plaintiff, Convergent Media IV LLC (“Convergent”) hereby sues Aperture
21 Media Partners LLC (“Aperture”), and alleges:

22 **I. PARTIES, JURISDICTION, AND VENUE**

23 1. Convergent is a Florida limited liability company, with its principal
24 place of business in Florida.

25 2. Aperture is a Delaware limited liability company, with its principal
26 place of business in Los Angeles, California.

27 3. Pursuant to Title 28 of the United States Code §1332(a)(1), and other
28 applicable law, this Court possesses jurisdiction over this case the Parties are diverse

1 in that they are citizens of different states and the amount in controversy exceeds
 2 \$75,000. The value of the object of the litigation exceeds \$128,034 based upon
 3 Aperture's breaches, as more fully described below.

4 4. Pursuant to Title 28 of the United States Code §1391(a), venue is
 5 proper in the Central District of California because a substantial part of the events
 6 giving rise to the claims put forth herein occurred in the Central District of
 7 California and Aperture is located in the Central District. Furthermore, pursuant to
 8 the agreement between lenders, Aperture consented to participate in any legal action
 9 with Convergent in the Central District of California.

10 **II. OVERVIEW OF CONTROVERSY UNDERLYING THIS ACTION**

11 5. This Complaint pertains to a controversy as to the allocation of
 12 payments received by Aperture from MX2 Holdings, LLC (the "Borrower"), in
 13 connection with a movie entitled "Maggie Moore(s)" (the "Film").

14 6. Aperture is a media finance and production company that focuses on
 15 providing advisory services and entertainment financing for the production of films
 16 and television series. Aperture advertises itself as a "one-stop shop," that provides
 17 not only capital, but also a variety of other entertainment services such as
 18 production, distribution, and advertisement.

19 7. Convergent is a special purpose entity formed to interface with
 20 Aperture to participate in lending money to the Borrower for the production of the
 21 Film. The Borrower received financing from both Convergent and Aperture for the
 22 production of the Film.

23 8. The completion of the Film occurred with the assistance of Media
 24 Guarantors Insurance Solutions, LLC ("MGIS"). MGIS specializes in providing
 25 bonds to production companies to facilitate completion of the Films.

26 **III. THE LOAN AGREEMENT AND THE INTERCREDITOR** 27 **AGREEMENT**

28 9. On October 22, 2021, Aperture and the Borrower entered into a lending

1 relationship for the principal amount of \$7,366,638 (the “Loan Amount”). The
 2 Loan Amount was to be used for the purpose of producing, completing, and
 3 delivering the Film. The lending relationship is evidenced by a series of loan
 4 documents, including the “Loan and Security Agreement” (the “Loan Agreement”),
 5 executed between the Borrower and Aperture on October 22, 2021.

6 10. The Loan Agreement includes a list of authorized distributors
 7 (collectively, the “Current Distributors”), based upon those distribution companies
 8 with current distribution contracts with the Borrower (collectively, the “Distribution
 9 Contracts”). The Current Distributors included both domestic and international
 10 distribution companies with distribution territories all over the world.

11 11. The Loan Agreement also stated that the Film was to be produced by
 12 both the Borrower and MX2 Productions Inc. (“MX2”). MX2 is a Florida
 13 corporation that is affiliated with the Borrower. Pursuant to the terms of the Loan
 14 Agreement, all production bank accounts that were maintained in connection with
 15 the Film were to be maintained under the name of either MX2 or the Borrower.
 16 MX2 was also responsible for acquiring certain copyrights necessary to obtain rights
 17 to the screenplay that served the basis for the Film.

18 12. The Loan Agreement makes reference to the roles of other third parties,
 19 including MGIS, in ensuring timely production and delivery of the Film to Aperture,
 20 in the event of exigencies. The Loan Agreement provided that Endeavor Content,
 21 LLC (the “Sales Agent”) would be engaged as the sales agent for the Borrower and
 22 would be primarily responsible for the sales of the Film to the authorized
 23 distributors. The responsibilities of MGIS, the Sales Agent, the Borrower, and
 24 Aperture are more fully governed by the “Sales Agent Interparty Agreement.”

25 13. Though Convergent is not a party to the Loan Agreement, the Loan
 26 Agreement contemplates that Convergent would provide funding for a portion of the
 27 Loan Amount. Accordingly, on October 22, 2021, Convergent and Aperture
 28 executed the “Agreement Between Lenders” (the “Intercreditor Agreement”). A

1 true and correct copy the Intercreditor Agreement is attached hereto as Exhibit “1.”

2 14. The Intercreditor Agreement states that \$900,000 of the Loan Amount
3 would be funded by Convergent (the “Convergent Loan Amount”), with the
4 remaining \$6,466,638 to be provided by Aperture (the “Aperture Loan Amount”).
5 The Intercreditor Agreement provides that Aperture would be primarily interfacing
6 with the Borrower and outlines the distribution of payments received towards the
7 Loan Amount. As the senior lender under the Intercreditor Agreement, Aperture
8 was first in line to be paid and upon full payment of the Aperture Loan Amount,
9 Convergent would then begin to recoup the Convergent Loan Amount from the
10 Borrower.

11 15. The Intercreditor Agreement requires that upon full and final payment
12 of the Aperture Loan Amount, Aperture assign all rights, title, and interest held by
13 Aperture in the Loan Agreement to Convergent.

14 **IV. APERTURE’S ALLEGATIONS OF BORROWER’S DEFAULTS**
15 **UNDER THE LOAN AGREEMENT**

16 16. Following the execution of the Loan Agreement, the Borrower and
17 MX2 began work on producing the Film. Shortly thereafter, Aperture claimed that
18 the Borrower had defaulted under the terms of the Loan Agreement. In hindsight,
19 Aperture’s intentions and motivations are clear. From the outset, Aperture had no
20 interest in a business relationship with Convergent as contemplated in the
21 Intercreditor Agreement. Rather, Aperture’s only goal was to purloin the credit
22 enhancement provided by Convergent’s subordinated investment by generating
23 massive fees, interest, and superficial default interest applicable to the Aperture
24 Loan Amount. Aperture sought to accomplish this goal by using trumped-up
25 defaults of the Loan Agreement, thereby triggering the Loan Agreement’s unlawful
26 and unenforceable default interest provision, and racking up excessive and
27 unnecessary legal fees chasing default interest, to which Aperture was not entitled.
28 By continuously adding default interest and various fees to the balance of the Loan

1 Amount, Aperture sought to create a situation where the Aperture Loan Amount
2 would never be paid off, thereby frustrating the purpose of the Intercreditor
3 Agreement and preventing the automatic assignment of the right to service the loan
4 to Convergent.

5 17. Aperture's spurious claims of default began on March 28, 2022, when
6 Aperture sent an e-mail to the Borrower claiming that the Borrower had triggered a
7 default event under the terms of the Loan Agreement. For example, Aperture
8 claimed that the Borrower triggered a default event when the Film's distributor for
9 the Russian territory (among others in the region) was an unacceptable distributor.
10 By unilaterally determining this distributor was unacceptable, Aperture claimed that
11 the gap amount was less than the maximum permitted gap amount, which Aperture
12 claims had a material adverse effect on the Borrower. Yet, afterwards, when this
13 purportedly "unacceptable distributor's" related entity located outside of Russia
14 wired \$320,000 to Aperture, Aperture accepted those funds. To the extent the gap
15 amount exceeded the maximum permitted gap amount, Aperture's acceptance of
16 \$320,000 reduced the gap amount far below the maximum permitted gap amount.
17 Even though Aperture has accepted this payment, and there has been no materially
18 adverse effect on the Borrower, Aperture continues asserting that the Borrower is in
19 default on this basis.

20 18. Another trumped-up default alleged by Aperture relates to the Film's
21 delivery date. The Film was scheduled to be delivered to (a) the Sales Agent by
22 August 21, 2022, (b) the Current Distributors by October 1, 2022, and (c) Aperture
23 within sixty (60) days of the expiration of the "Letter of Credit Agreement."
24 Pursuant to Section 1.1 of the Loan Agreement, MGIS had sole discretion to extend
25 those deadlines based upon a notice of exigencies. MGIS extended these deadlines
26 several times, ultimately extending the deadline for delivery to the Sales Agent to
27 December 19, 2022, and the deadline for delivery to the Current Distributors was
28 extended to January 29, 2023. The completion bond delivered the film prior to this

1 date. Notwithstanding the Borrower's timely delivery of the Film, Aperture
2 continues to assert that the Borrower failed to timely deliver the Film. Furthermore,
3 as the bond was successfully initiated by MGIS, and the Film was delivered
4 pursuant to the bond, the bond functioned as required and per agreement, thereby
5 avoiding any defaults related to, among other things, the budget or delivery of the
6 Film.

7 19. Perhaps the most brazen of Aperture's concocted defaults arises out of
8 Aperture's allegation that the Borrower rejected an offer of \$300,000 from a
9 distributor to distribute the Film in Latin America in November of 2021. Tellingly,
10 *for the first time ever*, on or about October 24, 2023, one month after the Aperture
11 Loan Amount was satisfied, Aperture alleged that Borrower actually triggered a
12 default event on November 12, 2021, *a full two years earlier*. This purported
13 default occurred less than one month after Aperture and the Borrower executed the
14 Loan Agreement, which was in an amount well-below the minimum value ascribed
15 for sales of the Film to the Latin America territory.

16 20. Despite clear language to the contrary, Aperture now contends that in
17 addition to the Borrower's requirement to obtain written approval from Aperture
18 prior to entering into any distribution agreements, the Borrower also was required to
19 obtain written approval from Aperture prior to rejecting any offers. First, *assuming*
20 *arguendo* that Aperture's interpretation of the Loan Agreement is correct, no offer
21 for distribution in the Latin America territory was ever conveyed to Borrower from
22 Particular Crowd, LLC, the distributor in question. Next, while some informal
23 discussions regarding the Latin American territory did occur in November of 2021,
24 Aperture was a full participant in those discussions and could have weighed in
25 regarding Borrower's purported rejection of the offer at that time; however,
26 Aperture agreed with Borrower that the amounts discussed at that point fell far
27 below being worthy of any serious consideration. Aperture only conveniently
28 contends this purported rejection was a default event as a desperate cash-grab for

1 default interest.

2 21. The various other claimed defaults by the Borrower under the Loan
3 Agreement similarly appear to be concocted and meritless events of default.

4 22. Aperture's improper actions are not limited to trumped-up allegations
5 of default, but also to incurring \$46,317 in unnecessary and excessive attorneys'
6 fees, allegedly incurred in connection with the servicing of the Loan Agreement.
7 On information and belief, the only work performed by Aperture's attorneys in
8 connection with the Loan Agreement amounted to sending a handful of short letters
9 alerting the Borrower to its purported defaults. Certainly, these activities do not
10 warrant \$46,317 in claimed legal fees. When Aperture presented Convergent with
11 this fact, while noting that payments under the Loan Agreement were used to pay
12 for those fees, and notwithstanding Convergent's request for details, Aperture
13 refused to provide Convergent with any context of the fees beyond that they were
14 related to Aperture's servicing of the Loan Amount.

15 **V. APERTURE'S FRUSTRATION OF THE LOAN AGREEMENT**
16 **TURNS INTO APERTURE BREACHING THE INTERCREDITOR**
17 **AGREEMENT**

18 23. As the primary entity interfacing with the Borrower, Convergent relied
19 upon Aperture to calculate, collect, and distribute all payments received by the
20 Borrower in accordance with the terms of the Intercreditor Agreement. As outlined
21 above, the Intercreditor Agreement provides that once Aperture was reimbursed for
22 fees and costs and Aperture Loan Amount was paid in full, all payments would be
23 utilized towards repayment to Convergent.

24 24. Aperture was paid in full no later than September 27, 2023. However,
25 despite being paid in full, Aperture has breached the Intercreditor Agreement by not
26 assigning the servicing of the Loan Agreement to Convergent. Aperture continues
27 to assert rights under the Loan Agreement it no longer has. By not assigning the
28 servicing of the Loan Agreement to Convergent, Aperture has received at least

1 \$128,034 in payments that, per the Intercreditor Agreement, should have been paid
2 to Convergent.

3 25. Aperture has also breached the Intercreditor Agreement by failing to
4 recognize Convergent's initiation of the buy-out procedure under the Intercreditor
5 Agreement. On October 17, 2023, Convergent sent Aperture a "Buy Out Notice",
6 and requested Aperture to prepare a calculation and breakdown of the purchase price
7 of the remainder of the Loan Amount pursuant to Section 12 of the Intercreditor
8 Agreement. Yet, on October 24, 2023, Aperture responded to Convergent's Buy-
9 Out Notice by not recognizing it, allowing Aperture to continue to attempt to make
10 erroneous claims of defaults the Loan Agreement, purloin proceeds entitled to
11 Convergent, and not releasing the Loan Agreement to be serviced by Convergent.
12 Aperture defended its improper actions by erroneously claiming that the Buy-Out
13 Notice may only be submitted if Aperture desired to assign its rights and interest to
14 a third party. Further, Aperture claimed that this alone was a condition precedent
15 that was required to occur before the Buy-Out Notice could be considered.
16 Ultimately, Aperture failed to provide its buy out calculations within the period
17 specified in the Intercreditor Agreement, breaching the same.

18 **FIRST CLAIM FOR RELIEF**

19 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

20 26. Convergent reincorporates by reference the allegations contained in
21 paragraphs 1 through 25 above as though fully set forth herein.

22 27. The Parties are parties to the Intercreditor Agreement and the
23 Intercreditor Agreement is binding and enforceable.

24 28. Pursuant to the terms of the Intercreditor Agreement, all payments
25 received from the Borrower were to be made either directly to Aperture or
26 subsequently provided to Aperture. .

27 29. The Intercreditor Agreement further provided that, upon satisfaction of
28 the Aperture Loan Amount, Aperture's rights, interest, and title under the Loan

1 Agreement would automatically transfer to Convergent, thereby allowing
 2 Convergent to step into the shoes of Aperture. Upon this automatic assignment to
 3 Convergent, Aperture is obligated to disgorge to Convergent all amounts received
 4 by Aperture after it had been paid in full.

5 30. As stated above, by concocting trumped-up defaults and paying its
 6 attorneys unnecessary and excessive fees, all adding to the balance of the Loan
 7 Amount, Aperture is effectively creating a scenario where (under its interpretation
 8 of the Loan Agreement) the balance of the Aperture Loan Amount will never be
 9 zero, and Aperture will continue to purloin for the sole benefit of Aperture while
 10 unnecessarily extending the date where Convergent will start to receive payments
 11 from Borrower.

12 31. By way of these actions, Aperture is interfering with Convergent's
 13 rights to receive the benefit of the Intercreditor Agreement, *i.e.*, service the Loan
 14 Agreement and recover amounts owed to Convergent by the Borrower.

15 32. In or around September 27, 2023, the Aperture Loan Amount was fully
 16 paid off and rights previously held by Aperture under the Loan Agreement should
 17 have automatically transferred to Convergent. Accordingly, all conditions precedent
 18 to the automatic assignment of Aperture's rights to Convergent have occurred.

19 33. As a result of Aperture's actions, Aperture has unfairly interfered with
 20 Convergent's right to receive the benefits under the Intercreditor Agreement and
 21 Loan Agreement. These breaches have prevented Convergent from receiving
 22 payments under the Loan Agreement occurring after September 27, 2023, the date
 23 Aperture was paid in full. These breaches have resulted in Convergent sustaining
 24 monetary damages in excess of \$128,034.

25 **SECOND CLAIM FOR RELIEF**

26 **(Breach of Contract)**

27 34. Convergent reincorporates by reference the allegations contained in
 28 paragraphs 1 through 33 above as though fully set forth herein.

35. A valid contract exists between Convergent and Aperture, as evidenced by the Intercreditor Agreement.

36. Aperture has materially breached the terms of the Intercreditor Agreement by (a) failing to remit payments exceeding \$128,034 to Convergent that were improperly received by Aperture after the Aperture Loan Amount had been satisfied, (b) continuing to assert rights under the Loan Agreement, when all remaining interest, with the exception of Aperture's retained rights, should have automatically transferred to Convergent, and (c) failing to timely provide a breakdown of the purchase price calculations in response to Convergent's Buy Out Notice.

37. Convergent sustained damages resulting from Aperture's breaches of the Intercreditor Agreement in an amount exceeding \$128,034.

PRAYER FOR RELIEF

WHEREFORE, Convergent prays for judgment as follows:

1. Judgment be entered in favor of Convergent and against Aperture with respect to all causes of action in the Complaint;
2. That the Court awards Convergent monetary damages in an amount to be proven at trial;
3. That the Court awards Convergent for all costs and interests; and
4. That the Court award such other relief as it may deem just and proper.

Dated: January 5, 2024

BARNES & THORNBURG LLP

By: /s/ Joseph M. Wahl

Joseph Wahl

Shant N. Nashalian

Attorneys for Plaintiff CONVERGENT
MEDIA IV LLC